English Combination Acts Of The Eighteenth Century

John V. Orth

'United to protect, not combined to injure.' With these words in 1840 the United Society of Brushmakers,[1] bore witness to a shift in the language of labor organizations. While community of experience and interests was always what held such groups together, there was uncertainty in the first part of the nineteenth century about what to call them. Their name in the statute book, dating back to the early eighteenth century, was 'combination'.[2] Some workmen proudly adopted the term: 'by combination we shall succeed' proclaimed the Amalgamated Society of Journeymen Cloggers.[3] But 'combination' suffered by association with the ancient and pejorative word: 'conspiracy'.[4] As the brushmakers realized, it was better to reject that

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1. R. and E. Frow and Michael Katanka, *History of British Trade-Unionism: A Select Bibliography* (London, 1969) 12 (illustration of membership card). For comment on this motto see A.E. Musson, *Trade Unions and Social History* (London, 1974) viii.
   Edmund Burke also recognized the terminological problem: 'When bad men combine, the good must associate. . . '. *Thoughts on the Cause of the Present Discontents* (1770), reprinted in Paul Langford, ed., *Writings and Speeches*, 5 vols. to date (Oxford, 1981–) ii: 315.

2. 7 Geo. 1, st. 1, c. 13 (1721). Previous statutes had called them 'conspiracies' or 'confederacies'. See, e.g., 2 and 3 Edw. 6, c. 15 (1548); 3 Hen. 6, c. 1 (1424).

3. R. and E. Frow and Michael Katanka, supra note 1, front cover (illustration of membership card).

4. See M. Dorothy George, 'The Combination Laws Reconsidered', *Economic Journal (Supp: Economic History Ser., No. 2)* Supp.: 214, 223; *Oxford English Dictionary* (Oxford, 1933), s.v. 'combination' ('formerly used almost always in a bad sense, as conspiracy, self-interested or illegal confederacy'); Samuel Johnson, *Dictionary* (London, 1755), s.v. 'combination' ('now generally used in an ill sense. . .').
   In the fourteenth century John Wyclif, the religious reformer, had this to say about trade practices of craftsmen:

   > Also men of sutel craft, as fre masons and othere, . . . conspiren togidere that no man of here craft schal take lesse on a day that thei setten, though he schulde bi good conscience take much lesse, and that noon of hem schal make sade trewe work to lette othere mennus wynnying of the craft, and that non of hem schal do ought but only hewe stone, though he myght profit his maistir twenty pound bi o daies werk bi leggyng on a wal withouten harm or penying to himself.

term in favor of a more positive label: 'union', not 'combination'. By the latter part of the nineteenth century 'trade union' was standard usage, even in law.[5]

Before the modern era, however, 'combination acts'—their adoption, consolidation, and repeal—represented, with common-law conspiracy, the law's attitude toward labor organizations. Labor history to this day cherishes the account of this legislation; attention focuses especially on the act passed in 1799[6] and on that which repealed and replaced it in 1800.[7] To Fabian historians like Sidney and Beatrice Webb these Combination Acts represented a 'far-reaching change of policy', 'a new and momentous departure';[8] John and Barbara Hammond regarded them as 'the most unqualified surrender of the State to the discretion of a class in the history of England'.[9] In two influential articles M. Dorothy George, who may safely be labeled a non-Fabian historian, argued on the contrary that the Acts represented 'no change of policy'[10] and dismissed them as 'in practice a very negligible instrument of oppression'.[11] Ignoring George, the historian of English law Sir William Holdsworth judged the 1799 and 1800 Acts 'very different in their character from the earlier combination acts which applied to particular trades'.[12]

The debate, like too many others, has continued along the same lines. The thoroughly modern Marxist, E.P. Thompson, while conceding that the Combination Acts were 'not as widely employed as might have been expected', has insisted nonetheless that 'no one familiar with these years can doubt that their general prohibitive influence was ever-present'.[13] Criticizing Thompson, A.E. Musson has crudely restated George's argument: 'the

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Thomas Arnold, ed., *Select English Works of John Wyclif*, 3 vols. (Oxford, 1869–1871) iii: 333. See also 3 Hen. 6, c. 1 (1424) (outlawing 'congregations and confederacies' of masons).

5. Trade Union Act, 34 and 35 Vict., c. 31, §23 (1871) (definition of 'trade union'); 39 and 40 Vict., c. 22, §16 (1876) (amending §23). See also infra note 291.

6. 39 Geo. 3, c. 81 (1799).

7. 39 and 40 Geo. 3, c. 106 (1800).

8. Sidney and Beatrice Webb, *History of Trade Unionism* (London, rev. ed., 1920) 64, 72.

9. J. L. and Barbara Hammond, *The Town Labourer, 1760-1832: The New Civilization* (London, 1917) 113.

10. M. Dorothy George, supra note 4 at 226-227.

11. M. Dorothy George, 'The Combination Laws', *Economic History Review* vi (1st ser. 1935-36) 172. For a critical assessment of George's historical method see John V. Orth, 'M. Dorothy George and the Combination Laws Reconsidered', in Douglas Hay and Francis Snyder, eds., *Labour, Law and Crime in Historical Perspective* (London, forthcoming).

12. Sir William Holdsworth, 'Industrial Combinations and the Law in the Eighteenth Century', 18 *Minnesota Law Review* 369, 387 (1934). The same judgment is repeated verbatim in Holdsworth's *History of English Law*, 17 vols. (London, 1903–1972) xi: 498.

13. E. P. Thompson, *The Making of the English Working Class* (New York, 1963) 505.

cruelly oppressive Combination Laws' were 'myths' based on 'confusion of the Combination Laws of 1799–1800 with other, older legal controls, which were actually more severe and more frequently enforced'.[14] On behalf of a self-proclaimed 'conservative interpretation of labor history',[15] C.R. Dobson has also emphasized continuity: the 1799 Act 'codified and generalized existing legislation';[16] together the two Acts 'carried into the nineteenth century the eighteenth-century experience of mediation by the magistrates'.[17]

Old and new, the combination laws succumbed to attack by *laissez-faire* ideologues in the first quarter of the nineteenth century. In 1824, in a celebrated Benthamite maneuver,[18] Francis Place arranged the repeal of the combination laws and blunted a counterattack in 1825.[19] This victory by a group denounced as 'a knot of men who were strangers to business, to the working orders, and to human nature'[20] swept away statutes that had accumulated over centuries of economic regulation. Since the scarcity of labor caused by the Black Death in 1348, English workmen had been subject to legal compulsion to work at prescribed wages.[21] The last great legislative impulse of this kind came in the Tudor-Stuart period, marked preeminently by the Elizabethan Statute of Artificers in 1563.[22] Although wage regulation in general petered out in the eighteenth century,[23] it remained basic to legal

14. A. E. Musson, *British Trade Unions, 1800-1875* (London, 1972) 22.

15. C. R. Dobson, *Masters and Journeymen: A Prehistory of Industrial Relations, 1717-1800* (London, 1980) 151.

16. Ibid. at 141.

17. Ibid. at 122.

18. See Graham Wallas, *The Life of Francis Place, 1771-1854* (New York, rev. ed., 1918) 197-240; S.E. Finer, 'The Transmission of Benthamite Ideas, 1820-50', in Gillian Sutherland, ed., *Studies in the Growth of Nineteenth-Century Government* (Totowa, N.J., 1972) 11-32; D.J. Rowe, 'Francis Place and the Historian', *Historical Journal* xvi (1973) 45-63.

19. 5 Geo. 4, c. 95 (1824); 6 Geo. 4, c. 129 (1825). See John V. Orth, 'The British Trade Union Acts of 1824 and 1825: Dicey and the Relation Between Law and Opinion', 5 *Anglo-American Law Review* 131-52 (1976).

20. *Blackwood's Edinburgh Magazine* xviii (1825) 20.

21. Statutes of Labourers, 23 Edw. 3 (1349), 25 Edw. 3, st. 1 (1350). See Bertha H. Putnam, *The Enforcement of the Statutes of Labourers, 1349-59* (New York, 1908); Elaine Clark, 'Medieval Labor Law and English Local Courts', 27 *American Journal of Legal History* 330-53 (1983).

22. 5 Eliz., c. 4 (1563). See S.T. Bindoff, 'The Making of the Statute of Artificers', in S.T. Bindoff, J. Hurstfield, C.H. Williams, eds., *Elizabethan Government and Society: Essays Presented to Sir John Neale* (London, 1961) 56-94; Donald Woodward, 'The Background to the Statute of Artificers: The Genesis of Labour Policy, 1558-1563', *Economic History Review* xxxiii (1980) 17.
The Statute of Artificers was amended by 1 Jac. 1, c. 6 (1604), 7 Jac. 1, c. 3 (1609), and 16 Car. 1, c. 4 (1640).

23. See W.E. Minchinton, ed., *Wage Regulation in Pre-Industrial England* (New York,

economic theory; indeed in specific trades it received a renewed lease on life in several of the eighteenth-century combination acts at which Place took particular aim.[24] In all, thirty-five statutes[25] were scheduled for repeal in whole or in part, including the 1800 Combination Act. In addition to repealing the named laws, Place's Acts included a general repealer of all other statutes 'relative to combinations to obtain an advance of wages, or to lessen or alter the hours or duration of the time of working, or to decrease the quantity of work, or to regulate or control the mode of carrying on any manufacture, trade, or business, or the management thereof'.[26] Place's program was not limited to freeing labor. If what today is called free collective bargaining was to be legislated, capital had to be freed as well. Combinations of employers were consequently legalized.[27] And regulation of the labor market had to end: before Place's repealer fell all statutes 'relative . . . to fixing the amount of the wages of labour', as well as those relative 'to obliging workmen not hired to enter into work'.[28] The new

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1972) 9-36, 206-35. The wage clauses of the Statute of Artificers were repealed in the first quarter of the nineteenth century, 53 Geo. 3, c. 40 (1813).

24. 7 Geo. 1, st. 1, c. 13 (1721); 8 Geo. 3, c. 17 (1768); 13 Geo. 3, c. 68 (1773); 32 Geo. 3, c. 44 (1792).

25. For citations see infra notes 31-34.

26. 5 Geo. 4, c. 95, § 1 (1824); 6 Geo. 4, c. 129, § 2 (1825).

27. Correlative to the statutes against the combinations of labor, those against combinations of employers were defined as those 'relative. . .to combinations to lower the rate of wages, or to increase or alter the hours or duration of the time of working, or to increase the quantity of work, or to regulate or controul the mode of carrying on any manufacture, trade, or business, or the management thereof'. 5 Geo. 4, c. 95, § 1 (1824); 6 Geo. 4, c. 129, § 2 (1825).

    The definition of combination implied in the 1824-25 acts remained in use into the twentieth century. In 1904 A.V. Dicey observed:

    > The combination law, as the expression is used . . . generally by English judges and lawyers, means the body of legal rules or principles which from time to time regulate the right of workmen on the one side to combine among themselves for the purpose of determining by agreement the terms on which, and especially the rate of wages at which, they will work, or, in other words, sell their labour; and the right of masters, on the other side, to combine among themselves for the purpose of determining by agreement the terms on which, and especially the rate of wages at which, they will engage workmen, or, in other words, purchase labour.

    'The Combination Laws as Illustrating the Relation Between Law and Opinion in England during the Nineteenth Century', 17 *Harvard Law Review* 511 (1904). The 'combination laws' of the title seem to be the succeeding bodies of legal rules or principles governing combinations at various times during the nineteenth century.

28. 5 Geo. 4, c. 95, § 1 (1824); 6 Geo. 4, c. 129, § 2 (1825). One of the eighteenth-century acts repealed by name in 1824-25 was not a combination act at all: it provided for wage regulation in weaving, as well as strengthening the law against the truck system, 29 Geo. 2, c. 33 (1756). The wage regulation provisions had already been repealed, 30 Geo. 2, c. 12 (1757). See text at infra notes 106-23.

legislation settled the law on combinations (or unions)—with one minor exception[29]—until the epochal Trade Union Act of 1871.[30]

Of the thirty-five statutes repealed by name in 1824 only fourteen applied to England.[31] The remainder applied to other parts of the United Kingdom: thirteen to Ireland,[32] seven to Scotland,[33] and one to Ireland and Scotland jointly.[34] By far the largest number of English acts dated from the eighteenth century; of fourteen statutes only four had been passed before 1700. The oldest was from the reign of Edward I.[35] In actual fact it said nothing about combination or wage regulation but was the foundation of common-law conspiracy[36] which was in time extended to cover this area, lending support to Professor Plucknett's claim that 'a thorough commentary upon the statutes of Edward I would be in effect a history of the common law from the thirteenth century down to the close of the eighteenth'.[37] In 1824–25 it was repealed insofar as it related to combinations or conspiracies to alter wages, hours, or quantity of work, or to control management.[38] Three other pre-eighteenth-century statutes were ancillary to earlier wage regulation. Within a century of the Black Death and legislation to which it gave rise, parliament outlawed 'congregations and confederacies' of masons that were subverting the 'good course and effect of the statutes of labourers'.[39] In the days of the Tudors concern about inflation led to a crackdown on

29. 22 Vict., c. 34 (1859). See John V. Orth, 'English Law and Striking Workmen: The Molestation of Workmen Act, 1859', 2 *Journal of Legal History* 238-57 (1981), and 'The Law of Strikes, 1847-71', in J.A. Guy and H.G. Beal, eds., *Law and Social Change in British History* (London, 1984) 126-44.

30. 34 and 35 Vict., c. 31 (1871). For an overview of nineteenth-century developments see John V. Orth, 'The Legal Status of English Trade Unions, 1799-1871', in Alan Harding, ed., *Law-Making and Law-Makers in British History* (London, 1980) 195-207.

31. For citations see Table and infra notes 35, 39-41, and 45.

32. Ten Irish combination acts of the eighteenth century repealed by name in 1824-25 are listed in an Appendix. The remaining three, earlier and later, are: 33 Hen. 8, st. 1, c. 9 (1542); 43 Geo. 3, c. 86 (1803); 47 Geo. 3, st. 1, c. 43 (1807). See Patrick Park, 'The Combination Acts in Ireland, 1727-1825', 14 *Irish Jurist* 340 (new ser., 1979).

33. 5 Parl. Jac. 1, c. 78 (1426); 5 Parl. Jac. 1, c. 79 (1426); 5 Parl. Jac. 1, c. 80 (1426); 7 Parl. Jac. 1, c. 102 (1427); 5 Parl. Mar., c. 23 (1551); 7 Parl. Jac. 6, c. 121 (1581); 39 Geo. 3, c. 56 (1799). See J.L. Gray, 'The Law of Combination in Scotland', *Economica* viii (1st ser. 1928) 332.

34. 57 Geo. 3, c. 122 (1817) (extending 12 Geo. 1, c. 34 and 22 Geo. 2, c. 27).

35. 33 Edw. I, st. 2 (1305).

36. See Percy Henry Winfield, *The History of Conspiracy and Abuse of Legal Procedure* (Cambridge, 1921) 1-2.

37. T.F.T. Plucknett, *The Legislation of Edward I* (London, 1949) 157.

38. 5 Geo. 4, c. 95, §1 (1824); 6 Geo. 4, c. 129, § 2 (1825).

39. 3 Hen. 6, c. 1 (1424).

Table

ENGLISH COMBINATION ACTS OF THE EIGHTEENTH CENTURY

[Note. Acts numbered (1) to (9) were repealed by name in 1824-25.]

Citation		Coverage
(1)	7 Geo. 1, st. 1, c. 13 (1721)	Tailors in London & Westminster
(2)	12 Geo. 1, c. 34 (1726)	Weavers & Woolcombers (incl. Combers of Jersey, Framework Knitters, & Stockingers)
(3)	22 Geo. 2, c. 27 (1749)	Dyers & Hot Pressers; Manufacturers of Woolens; Hatters & Felt Makers; Manufacturers of Silk, Mohair, Fur, Hemp, Flax, Linen, Cotton, Fustian, Iron, & Leather
(4)	8 Geo. 3, c. 17 (1768)	Tailors in London & Westminster
(5)	13 Geo. 3, c. 68 (1773)	Silk Makers in Spitalfields
(6)	17 Geo. 3, c. 55 (1777)	Hatters
(7)	32 Geo. 3, c. 44 (1792)	Silk Makers in Spitalfields
(8)	36 Geo. 3, c. 111 (1796)	Papermakers
	39 Geo. 3, c. 81 (1799)*	General
(9)	39 & 40 Geo. 3, c. 106 (1800)	General

* repealed by 39 & 40 Geo. 3, c. 106 (1800).

'conspiracies of victuallers and craftsmen'.[40] Soon after the Stuart Restoration regulation of silk manufacture was tightened.[41] The only part of this statute to fall before Place's onslaught[42] was the section prohibiting

40. 2 and 3 Edw. 6, c. 15 (1548).

41. 13 and 14 Car. 2, c. 15 (1662).

42. 5 Geo. 4, c. 95, §1 (1824); 6 Geo. 4, c. 129, §2 (1825).

wage-setting by the Corporation of Silk Throwers,[43] in other words, a combination of employers.

Of the ten eighteenth-century English statutes repealed in 1824 and 1825 nine contained provisions against combinations of workmen;[44] the tenth concerned wage regulation in the woolen industry.[45] The only statute truly national in scope was the 1800 Combination Act, which had superseded the 1799 Act; the others were limited by trade, and sometimes by region as well. Until mid-century only a few trades were covered, albeit one of them was the anciently preeminent woolen industry. After an omnibus extension act in 1749 the tempo of combination legislation increased: new trades were covered and legislation gained in specificity and sophistication. Examination of the eighteenth-century acts will permit informed judgment on the revolutionary quality, if any, of the turn-of-the-century legislation. It will also shed light on official thinking about economic regulation and the contract of employment.

Tailors

The history of the combination acts begins, appropriately enough, with a strike.[46] The London tailors' strike of 1720[47] was the occasion for the enactment of the first combination act,[48] as well as for an early prosecution of workmen for criminal conspiracy.[49] After reciting the recent strike, the statute enacted a comprehensive scheme for labor relations in the tailoring trade in the metropolis—or, in the old-fashioned language of the law, 'within the weekly bills of mortality'.[50] To stamp out combinations the act voided all 'contracts, covenants or agreements' for raising wages or

43. 13 and 14 Car. 2, c. 15, §10.

44. See Table: English Combination Acts of the Eighteenth Century.

45. 29 Geo. 2, c. 33 (1756) (repealed in part by 30 Geo. 2, c. 12 (1757)). See supra note 28.

46. For the benefit of his pets Dr. John Doolittle supplied the following definition: 'A strike . . . is when people stop doing their own particular work in order to get somebody else to give them what they want'. Hugh Lofting, *Doctor Doolittle's Post Office* (Philadelphia, 1923) 168.

47. See C.R. Dobson, supra note 15 at 61-62; Frank W. Galton, ed., *Select Documents Illustrating the History of Trade Unionism: 1. The Tailoring Trade* (London, 1896) xiii-xxvi and 1-22.

48. 7 Geo. 1, st. 1, c. 13 (1721).

49. R. v. Journeymen-Taylors of Cambridge, 8 Mod. 10, 88 Eng. Rep. 9 (K.B. 1721).

50. 7 Geo. 1, st. 1, c. 13, §1. The 'weekly bills of mortality', dating from the great plague in London in the seventeenth century, were records of burials kept by the Company of Parish Clerks. The area covered represented greater London at the time. See M. Dorothy George, *London Life in the Eighteenth Century* (New York, 1925) 21.

reducing hours[51] and imposed two months imprisonment on offenders convicted of entering into such agreements in future.[52] The same punishment awaited strikers, described by the act as those who departed from service before the end of the term of employment or who left work unfinished or who refused employment without just cause.[53] Prosecution was designed to be speedy: trial was to be had before two justices of the peace within three months of the offense.[54] Conviction had to rest on the sworn testimony of at least one credible witness.[55] Appeal lay to the quarter sessions, the decision of which was to be final.[56] Those punished under the act were granted immunity from further punishment for the same offense 'by authority of any law now in force'.[57]

Offending tailors were, as the last clause plainly recognized, liable to prosecution under other laws. 'Leaving work unfinished', to name only one offense under the tailors' combination act, was also punishable under the Elizabethan Statute of Artificers.[58] Over and above various statutes applicable to their case, however, loomed the common law—the *lex non scripta* to which legal theorists gave pride of place.[59] Combination was, it seemed, also punishable as common-law conspiracy; coincidental with the tailors' combination act came a criminal prosecution in Cambridge.[60] Following the example of their metropolitan counterparts, Cantabrigian tailors had struck for higher wages. Indicted and found guilty of conspiracy at the assizes, they challenged their conviction in the Court of King's Bench. With the extreme technicality characteristic of eighteenth-century litigation, the challenges concerned the wording of the indictment; exception was taken, for instance, to the failure to describe Cambridge as a town in Cambridgeshire and to the propriety of describing journeymen as yeomen. Substantively the Court held that conspiring to raise wages was illegal; in sweeping dictum it declared: 'a

51. 7 Geo. 1, st. 1, c. 13, §1.

52. Ibid. (imprisonment, at JPs' discretion, either in house of correction at hard labor or in common jail).

53. Ibid. §6 (imprisonment in house of correction at hard labor). This section was expressly saved from repeal in 1824-25. 5 Geo. 4, c. 95, §1 (1824); 6 Geo. 4, c. 129, §2 (1825).

54. 7 Geo. 1, st. 1, c. 13, §1.

55. Ibid.

56. Ibid. §9.

57. Ibid. §10.

58. 5 Eliz., c. 4, §13 (1563). This dualism was unchanged a century later. See George White and Gravener Henson, *A Few Remarks on the State of the Laws, at Present in Existence, for Regulating Masters and Work-People* (1823) 51, 53, reprinted in Kenneth E. Carpenter, ed., *British Labour Struggles: Contemporary Pamphlets, 1727-1850*, 32 vols. (New York, 1975) vii: not separately paginated.

59. See, e.g., Sir William Blackstone, *Commentaries on the Laws of England*, 4 vols. (Oxford, 1765–1769) i: 63-84.

60. R. v. Journeymen-Taylors of Cambridge, 8 Mod. 10, 88 Eng. Rep. 9 (K.B. 1721).

conspiracy of any kind is illegal, although the matter about which they conspired might have been lawful for them, or any of them, to do, if they had not conspired to do it . . .'.[61]

To settle the dispute that led to the London strike in the first place, the tailors' combination act fixed wages and hours in the trade. Wages were to be no more than two shillings a day during the busiest season from Lady Day, March 25, to near midsummer, June 20, and no more than one shilling eight pence a day at other times.[62] Regular working hours were to be from 6 A.M. to 8 P.M. with an hour off for dinner,[63] although those with the stamina were permitted to eke out their statutory wages with overtime work.[64] Tailors were provided a special process for collecting unpaid wages. The justices of the peace were empowered to levy on the defaulter's goods; in case he had insufficient wherewithal, he was to be imprisoned until satisfaction was made.[65] With wages and hours legislatively determined there naturally arose the risk of evasion by economically motivated employers and employees. To prevent violation criminal penalties were provided: masters paying too much would be fined five pounds, and journeymen would be imprisoned for two months.[66] Setting wages by statute

61. 8 Mod. at 10-11, 88 Eng. Rep. at 10. Compare the equally vague language in William Hawkins, *A Treatise of the Pleas of the Crown*, 4 vols. (London, 1717) i: 72, §2. For a later prosecution for conspiracy of tailors outside the coverage of the tailors' combination act see R. v. Eccles, 1 Leach 274, 168 Eng. Rep. 240 (K.B. 1783) (Mansfield, C.J.: 'every man may work at what price he pleases, but a combination not to work under certain prices is an indictable offence'). For a list of thirty other indictments for conspiracy in the eighteenth century see Dobson, supra note 15 at 127-29. For selected cases involving criminal conspiracy in the early nineteenth century see infra note 271.

    In the late nineteenth century distinguished legal authorities denied that combination had ever been a criminal conspiracy at common law. See Robert S. Wright, *The Law of Criminal Conspiracies and Agreements* (London, 1873) 23-52; Sir James Fitzjames Stephen, *A History of the Criminal Law of England* 3 vols. (London, 1883) iii: 209-10. A contrary position was taken by Sir William Erle, who chaired the Royal Commission on Trade Unions (1867-69). See *Parliamentary Papers* (1868-69) xxxi: 235-361, published separately as William Erle, *The Law Relating to Trade Unions* (London, 1869). In the twentieth century R.Y. Hedges and Allan Winterbottom agreed in general with Wright and Stephen, while Sir William Holdsworth sided with Erle. Compare R.Y. Hedges and Allan Winterbottom, *The Legal History of Trade Unionism* (London, 1930) 13-18 with Sir William Holdsworth, supra note 12, 18 *Minnesota Law Review* at 377-80; Sir William Holdsworth, *History of English Law*, supra note 12 at xi: 482-85. A brief critique of Hedges and Winterbottom appears in John V. Orth, 'Doing Legal History', 14 *Irish Jurist* 114, 115-16 (new ser., 1979).

62. 7 Geo. 1, st. 1, c. 13, §2.

63. Ibid.

64. Ibid. §8.

65. Ibid. §§3–4. This section was expressly saved from repeal in 1824-25. 5 Geo. 4, c. 95, §1 (1824); 6 Geo. 4, c. 129, §2 (1825).

66. 7 Geo. 1, st. 1, c. 13, §7 (imprisonment in house of correction at hard labor). Henry

ran the further risk of being outdated by economic developments. To permit the necessary flexibility the act delegated to the justices of the peace in quarter sessions the power to alter wages and hours according to the 'plenty or scarcity of the time'.[67]

Almost a half-century after the tailors' combination act, unrest in the trade coincided with the disturbances surrounding the turbulent John Wilkes.[68] In 1768 a second statute was passed to improve the functioning of the earlier act.[69] Although the justices of the peace had from time to time adjusted the tailors' wages and hours, the preamble to the later statute declared that 'doubts and difficulties' had arisen and 'many subtil devices' had been practiced to evade the regulations.[70] The act established a new schedule of wages and hours, registering modest improvement in the tailors' economic condition. The maximum wage was set at two shillings seven pence a day all the year round, except during a time of general mourning[71] when high demand for clothing caused a rise of more than double in the maximum, to five shillings one and a half pence a day.[72] A modern historian has wryly wondered 'how many church-going tailors . . . prayed with all their hearts for the health of the royal family'.[73] Regular working hours were somewhat shorter under the new act: from 6 A.M. to 7 P.M. with an hour off for refreshment.[74] Punishment for violating the act was the same as that laid down forty-seven years earlier: two months imprisonment.[75] In keeping with the statute's purpose, however, elaborate provisions were included to reduce

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Fielding, novelist and justice of the peace, remarked on the unequal use of the house of correction (popularly known as the bridewell):

> that house where the inferior sort of people may learn one good lesson, viz. respect and deference to their superiors; since it must show them the wide distinction Fortune intends between those persons who are to be corrected for their faults, and those who are not; which lesson if they do not learn, I am afraid they very rarely learn any other good lesson, or improve their morals, at the house of correction.

Tom Jones (London, 1749) book iv, chap. 11.

67. 7 Geo. 1, st. 1, c. 13, §5.

68. See George Rudé, *Wilkes and Liberty: A Social Study of 1763 to 1774* (London, 1962) 94-95; *Select Documents Illustrating the History of Trade Unionism*, supra note 47 at xl-xlv, 57-65.

69. 8 Geo. 3, c. 17 (1768).

70. Ibid. at preamble.

71. For the costume required for mourning see C. Willett and Phillis Cunnington, *Handbook of English Costume in the Eighteenth Century* (London, 1957) 218, 317-19.

72. 8 Geo. 3, c. 17, §1.

73. John Rule, *The Experience of Labour in Eighteenth-Century English Industry* (New York, 1981) 179.

74. 8 Geo. 3, c. 17, §1.

75. Ibid. §2 (imprisonment, at JPs' discretion, either in house of correction at hard labor or in common jail).

the opportunity for procedural delay. Reluctant witnesses could be compelled to appear, and those who refused to testify could be locked up.[76] Appellants were required to provide security for their later appearance.[77] Counteractions against those enforcing the act were limited to six months after the fact[78] and successful defendants in such actions were awarded full costs.[79] The act expressly declared itself a 'public act'[80] (as opposed to a private one), the principal effect of which, as the clause spelled out, was to require all judges and justices of the peace to take notice of it without special pleading.[81]

To keep the regulations of wages and hours current, justices of the peace were again, as in 1721, empowered to alter them 'as the exigencies of the times may require'.[82] To provide uniformity throughout the metropolis,[83] the mayor, aldermen, and recorder of the City of London were to set the tailors' wages and hours not only for the City itself but also for the area five miles round about,[84] the area in other words of the 'weekly bills of mortality'. To provide sufficient notice of proposed changes, advertisements were to be placed three times in any two daily newspapers in the capital.[85]

In its enforcement provisions the act was aimed primarily at the employer class. The section concerning witnesses singled out 'any clerk, foreman, apprentice, servant, or other person or persons employed or retained by such person so suspected to have offended'.[86] Although the statute carefully exempted foremen and overtime work from its coverage, it expressly provided that such exemptions might not be used to elude the prescribed wage and hour regulations.[87] Finally employers who evaded the act by paying more than the allowed wages to tailors outside the London area were subjected to the extraordinary fine of 500 pounds; to make informing on such violators worthwhile, an informer was entitled to half that huge

76. Ibid. §3.

77. Ibid. §8.

78. Ibid. §9.

79. Ibid. §10.

80. Ibid. §11.

81. On the distinction between public and private acts see Sir William Blackstone, supra note 59 at ii: 346. Although not expressly so named, the first tailors' combination act was also undoubtedly 'public'.

82. 8 Geo. 3, c. 17, §4.

83. In 1751 and 1752 working hours in the City were one hour shorter than those in Middlesex. See C.R. Dobson, supra note 15 at 66.

84. 8 Geo. 3, c. 17, §4.

85. Ibid. §5.

86. Ibid. §3.

87. Ibid. §6.

amount.[88] In this regard the legislation was designed to maintain employer solidarity in face of economic temptations; as Adam Smith observed of this statute, it 'enforces by law that very regulation which masters sometimes attempt to establish by . . . combinations'.[89]

Weavers

Soon after the first tailors' combination act, strikes and violence by weavers[90] precipitated legislation in 1726 covering the venerable woolen trade.[91] After reciting recent events the act voided all contracts or agreements to regulate trade and prices, to raise wages, or to reduce hours; workmen entering into such contracts or agreements in future were to be imprisoned for three months.[92] Subject to the same punishment were those who struck work, that is, who departed before the end of their term or left work unfinished.[93] In case work was damaged the worker was liable to the owner for double its value; if the forfeiture went unpaid, he could be imprisoned for three months.[94] To eliminate a cause of dissension in the trade employers were prohibited from paying their workers' wages 'by way of truck'.[95] The truck system, payment of wages in goods rather than in money, although of uncertain economic impact,[96] was objected to by workmen. A perennial issue in industrial relations, the truck system was outlawed by general acts a century later.[97] Individual employers, while not necessarily committed to the system, feared to abandon it lest they be disadvantaged with respect to competitors; abolition by act of parliament

88. Ibid. §7.

89. Adam Smith, *An Inquiry into the Nature and Causes of the Wealth of Nations* (Edwin Cannan, ed., New York, 1937, lst. ed. 1776) 142.

90. See *Commons Journal* 20 (1725): 598-99, 602, 627, 647-48; Ephraim Lipson, *Economic History of England* 3 vols. (London, 6th ed., 1956) iii: 392-95.

91. 12 Geo. 1, c. 34 (1726). Although principally directed at woolcombers and weavers, ibid. §1, the act was extended by its last section to cover combers of jersey, framework knitters, and stockingers, ibid. §8.

92. Ibid. §1 (imprisonment, at JPs' discretion, either in house of correction at hard labor or in common jail). This is the only section of the weavers' combination act expressly repealed in 1824-25. 5 Geo. 4, c. 95, §1 (1824); 6 Geo. 4, c. 129, §2 (1825).

93. 12 Geo. 1, c. 34, §2 (imprisonment in house of correction at hard labor).

94. Ibid. (imprisonment in house of correction at hard labor).

95. Ibid. §3. For earlier truck acts see 1 Anne, st. 2, c. 18 (1703) (expired 1707); 9 Anne, c. 30 (1711) (revived earlier act and made it perpetual); 10 Anne, c. 16 (1712) (penalty for truck payment 20 shillings); 1 Geo. 1, c. 15 (1715) (increasing penalty for truck payment to 40 shillings).

96. See George W. Hilton, *The Truck System: Including a History of the British Truck Acts, 1465-1960* (Cambridge, 1960) 1-60.

97. 1 and 2 Will. 4, cc. 36 and 37 (1831).

had the advantage of excluding the practice by anyone. The weavers' combination act punished payment in truck by a fine of 10 pounds, half of which went to the informer.[98] It also empowered two justices of the peace to collect overdue wages by distress and sale of the offender's goods; in case of insufficiency, the offender was to be imprisoned for six months.[99] Appeals from any convictions under the act were to be heard and finally determined by the quarter sessions.[100]

In what amounts to a distinct act within the weavers' combination act, draconian punishments were imposed on violence to person or property. Assaulting or threatening an employer was made a felony, punishable by seven years transportation.[101] Breaking into a workshop with intent to destroy goods or tools was also made a felony, this one punishable by death 'without benefit of clergy',[102] that is, on the first offense.[103] Passed within a few years of the notorious Black Act,[104] this section added one more to the lengthening list of capital crimes in eighteenth-century England.[105] The new felonies were not triable by justices of the peace using summary procedure; instead prosecution was by indictment and trial. What was lost in speed of conviction was presumably made up by severity of punishment.

Like the tailors' combination act, that for weavers also required modification in light of practical experience,[106] although the sections specifically dealing with combinations remained unchanged. The provisions prohibiting payment of weavers in truck had not proved effective. The preamble to the new act in 1756 recited 'several prosecutions' of employers that had been dropped because of expense: the defendants had removed the cases from the justices of the peace to the higher courts by writ of certiorari.[107] To make effectual the prohibition of truck the statute doubled the fine from ten to twenty pounds.[108] Since half, as in the 1726 act, went

98. 12 Geo. 1, c. 34, §3. A limitation period of three months for prosecutions under this section was added a year later. 13 Geo. 1, c. 23, §§16-17 (1727).

99. 12 Geo. 1, c. 34, §3.

100. Ibid. §5.

101. Ibid. §6.

102. Ibid. §7. This section was repealed and replaced by 22 Geo. 3, c. 40 (1782).

103. For an eighteenth-century explanation of the anachronistic 'benefit of clergy' see Sir William Blackstone, supra note 59 at iv: 358-67.

104. 9 Geo. 1, c. 22 (1723). See E.P. Thompson, *Whigs and Hunters: The Origin of the Black Act* (New York, 1975).

105. See Sir Leon Radzinowicz, *The Movement for Reform 1750-1833* in Sir Leon Radzinowicz, *A History of English Criminal Law and Its Administration from 1750* 5 vols. (London, 1948–1986) i: 236, n. 15.

106. 29 Geo. 2, c. 33 (1756).

107. Ibid. at preamble.

108. Ibid. §3. The outlawry of truck was repeated the next year, 30 Geo. 2, c. 12, §3 (1757),

to the informer,[109] a substantial incentive existed to set a prosecution in motion. In addition, the new act dangled still more lucrative bait: a plaintiff could collect the entire twenty pounds by suing directly for it in an action of debt.[110] Since the appeals provisions of the earlier act had been found wanting, the succeeding act tightened the procedure. Appeals were conditioned on entering into a recognizance 'with sufficient security';[111] that is, the appellant obligated himself to pay a certain sum of money unless he prosecuted his appeal in good faith.[112] Decisions of the quarter sessions were again declared final, but this time, of course, removal by certiorari 'or other form or process of law' was prohibited.[113]

Not only did the second weavers' act strengthen the ban on truck, it also responded to the weavers' call for public regulation of wages.[114] An act passed in 1727, the year after the weavers' combination act, had required payment by the yard on pain of a five pound fine.[115] The preamble to the 1756 act recited the requirement and declared it ineffectual because of the expense of prosecution and the 'want of proper powers to regulate the wages to be paid to weavers'.[116] To remedy the situation the new act empowered the justices of the peace to set rates for weaving[117] and directed that notice of the rates be posted on church and chapel doors.[118] When the new power was first exercised, however, the employers protested that the order was impossible to follow because of the various shapes in which cloth was made.[119] The wage regulation section of the 1756 act was promptly repealed,[120] although a provision that anticipated later collective bargaining declared wage agreements between employers and weavers 'good, valid,

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and employers were required to pay wages within two days of completion of work on pain of a 40 shilling fine, ibid. §4.

109. 29 Geo. 2, c. 33, §5.

110. Ibid. §4.

111. Ibid. §7.

112. For a brief statement of the law on recognizances together with the form of words used see Sir William Blackstone, supra note 59 at ii: 341-42, 464.

113. 29 Geo. 2, c. 33, §5. As presupposed by this section, certiorari was available unless expressly negatived. See Sir William Blackstone, supra note 59 at iv: 269.

114. See W.E. Minchinton, 'The Petitions of the Weavers and Clothiers of Gloucestershire in 1756', *Transactions of the Bristol & Gloucestershire Archeological Society* lxxiii (1954) 216-27.

115. 13 Geo. 1, c. 23, §9 (1727).

116. 29 Geo. 2, c. 33, preamble.

117. Ibid. §1.

118. Ibid. §2.

119. See C.R. Dobson, supra note 15 at 76.

120. 30 Geo. 2, c. 12, §1 (1757).

and effectual, to all intents and purposes'.[121] In the Webbs' trenchant phrase parliament was in the process of exchanging 'its policy of medieval protection for one of "Administrative Nihilism"'.[122] Ironically Francis Place overlooked this repeal; in 1824–25 he re-repealed the sections of the 1756 act relating to 'the making of rates for the payment of wages, continuing and altering and notifying them'.[123]

Expanded Coverage

At mid-century the statutory ban on combination was expanded to include trades other than tailoring and weaving.[124] The immediate cause of legislation in 1749 was dispute in the hat-making industry over embezzlement.[125] After responding to that problem[126] the act went on to extend the weavers' combination act (1726) to many other trades, most of them in the clothing industry.[127] Dyers and hot-pressers, felt makers and hatters, and all persons employed in the manufacture of silk, mohair, fur, hemp, flax, linen, cotton, fustian, iron and leather—all were subjected to the anti-combination and anti-truck provisions that had earlier applied to weavers.[128] Although weavers and woolcombers were themselves already covered, the extension reached as well all persons employed 'in or about any of the woollen manufactures'.[129] The felony of assaulting or threatening employers, punishable by seven years transportation, was also extended,[130] although the capital offense in weaving of breaking into a workshop with intent to destroy goods or tools[131] was not. Given the large number of workers involved or soon to be involved in the enumerated trades, especially in the cotton industry, the coverage of the combination law was greatly expanded at a stroke. For exactly half a century, until the general Combination Act of 1799, there was to be no comparable expansion of coverage. In the meantime, however, legislation against combination continued in particular

121. Ibid. §2.

122. Sidney and Beatrice Webb, supra note 8 at 51.

123. 5 Geo. 4, c. 95, §1 (1824); 6 Geo. 4, c. 129, §2 (1825).

124. 22 Geo. 2, c. 27, §12 (1749).

125. See John Rule, supra note 73 at 131.

126. 22 Geo. 2, c. 27, §1 (extending 13 Geo. 2, c. 8 (1739)). See also 17 Geo. 3, c. 56 (1777).

127. 22 Geo. 2, c. 27, §12.

128. 12 Geo. 1, c. 34, §§1-5, extended by 22 Geo. 2, c. 27, §12.

129. Ibid.

130. 12 Geo. 1, c. 34, §6, extended by 22 Geo. 2, c. 27, §12.

131. 12 Geo. 1, c. 34, §7 (repealed and replaced by 22 Geo. 3, c. 40 (1782)).

trades, for example, the second tailors' act (1768), discussed above,[132] and still-to-be described acts concerning Spitalfields silk-makers, hatters, and papermakers. That further legislation was required for silk and hat-making suggests that omnibus extension of combination law was not a sovereign remedy.

Silk-Makers

In 1773 distress in Spitalfields, where silk weaving had been concentrated since the settlement of Huguenot craftsmen a century earlier, led to further legislation in favor of wage regulation and against combination.[133] Two justices of the peace in the area[134] were empowered to set wages, notice of which was to be published three times in two daily newspapers.[135] Employers who paid other than the set wages were to be fined fifty pounds;[136] silk-makers who took other than the set wages were to be fined forty shillings.[137] A further clause imposed the same penalty on silk-makers who combined to raise wages, who intimidated others to quit work in order to raise wages, or who assembled in groups of more than ten to demand higher wages, except by petitioning the justices of the peace assembled in quarter sessions.[138] As Sir William Holdsworth observed, the exception seems to support the proposition that 'combinations to present petitions to the king or parliament were regarded as legal'.[139] Fines both of employers and workmen were payable to the Weavers' Company to be used for the relief of 'distressed journeymen weavers'.[140] In case of default in paying their fines, employers were liable to distress and sale of their goods,[141] while

132. See text at supra notes 68-89.

133. 13 Geo. 3, c. 68 (1773). For the background of the legislation see J. H. Clapham, 'The Spitalfields Acts, 1773-1824', *Economic Journal* xxvi (1916) 459, and Alfred Plummer, *The London Weavers' Company, 1600-1970* (London, 1972) 315-28.

134. The act covered the county of Middlesex, the cities of London and Westminster, and the liberty of the Tower of London, 13 Geo. 3, c. 68, §1.

135. Ibid.

136. Ibid. §2.

137. Ibid. §3.

138. Ibid.

139. Sir William Holdsworth, 18 *Minnesota Law Review* at 383 n.85; Sir William Holdsworth, supra note 12, *History of English Law*, at xi: 489, n.14. Compare U.S. Constitution, amend. 1 (1791) ('Congress shall make no law . . . abridging . . . the right of the people peaceably to assemble, and to petition the government for redress of grievances').

140. 13 Geo. 3, c. 68, §§2–3.

141. Ibid. §2.

workmen were liable to imprisonment at hard labor for three months.[142] Should an employer evade the act by employing workmen outside the regulated area, he could be sued in an action of debt for fifty pounds, which the crown divided with the plaintiff.[143] *Bona fide* foremen were exempt from the act,[144] as in the second tailors' combination act (1768). To limit the supply of labor—and presumably to put upward pressure on wages in the long run—the act limited the intake of apprentices to two per weaver; a fine of twenty pounds was imposed on violators.[145] Apprenticeship may have been what G.M. Trevelyan called it, 'the old English school of craftsmanship and of character',[146] but its economic aspect was uppermost in the eighteenth century.

In its procedural sections the Spitalfields Act followed the lines laid down in earlier acts concerning other trades. As in the second tailors' combination act (1768), two justices of the peace were empowered to summon witnesses; in case of nonappearance the witness was subject to arrest; in case of refusal to testify he was subject to one month in prison.[147] As in the second weavers' act (1756), appeal lay to the quarter sessions, the appellant first finding 'sufficient security'.[148] As in the second tailors' combination act (1768), actions against persons enforcing the act had to be brought within six months.[149] Defendants in such actions were permitted to plead the general issue; in case of judgment in their favor or nonsuit, defendants recovered full costs.[150] Finally, the Spitalfields Act, like the second tailors' combination act (1768), was expressly declared a 'public act'.[151]

After almost two decades of experience with the Spitalfields Act it was extended in 1792 to include weavers who mixed other materials with silk.[152] At the same time minor amendments were made in procedures under the act. A standard 'form of conviction' was adopted, to be filed with the records of

142. Ibid. §3.

143. Ibid. §5.

144. Ibid. §6.

145. Ibid. §7. The repeal of the Spitalfields Act in 1824-25 was limited to its provisions for wage regulation and against combination, 5 Geo. 4, c. 95, §1 (1824); 6 Geo. 4, c. 129, §2 (1825).

146. G.M. Trevelyan, *English Social History: A Survey of Six Centuries, Chaucer to Queen Victoria* (London, 1943) 322. For a less rosy assessment see John Rule, supra note 73 at 95–123.

147. 13 Geo. 3, c. 68, §4.

148. Ibid. §8.

149. Ibid. §9.

150. Ibid. §10.

151. Ibid. §11.

152. 32 Geo. 3, c. 44, §1 (1792).

the sessions.[153] As in the second weavers' act (1756), the common-law courts were prohibited from removing the case by writ of certiorari.[154] In distinct provisions earlier acts punishing embezzlement of materials were extended to silk manufacture.[155]

Hatters

In 1777 parliament legislated for the hatters.[156] The new law addressed two topics of crucial importance to workmen: apprenticeship and combination. Tudor-Stuart statutes had restricted hat-making to native-born workmen who had served full apprenticeships; it had, in addition, limited masters to two apprentices at a time.[157] Restricted entry meant smaller numbers, which in turn meant economic advantage to workmen. The new act repealed the older legislation,[158] but in a modest concession to workmen required masters to employ one journeyman for each apprentice.[159]

The new law against combination among hatters followed a preamble reciting the extension of the weavers' combination act (1726) to hatters in 1749 and declaring that it had been rendered ineffectual by delay because no recognizance was required for appeal. The same complaint had earlier been made in the woolen industry where prosecutions of employers for paying in truck had been rendered ineffectual and in the tailoring trade where wage regulation had been evaded by 'many subtil devices'.[160] In those cases the remedy had been to require a recognizance 'with sufficient security' for appeal;[161] in the hatters' combination act the requirement was made still

153. Ibid. §2. The records of the sessions were kept by the *custos rotulorum*, one of the justices of the peace. See Sir William Blackstone, supra note 59 at iv: 269.

154. 32 Geo. 3, c. 44, §3.

155. Ibid. §§4–5 (extending 22 Geo. 2, c. 27 (1749) and 17 Geo. 3, c. 56 (1777)). The first act had in addition to outlawing embezzlement in certain trades also extended the weavers' combination act, 12 Geo. 1, c. 34 (1726), to the same trades. See text at supra at notes 124-32. The second act was a companion to the hatters' combination act, 17 Geo. 3, c.55(1777). See text at infra notes 156-69.

156. 17 Geo. 3, c. 55 (1777). See also 17 Geo. 3, c. 56 (1777) (concerning embezzlement).

157. 8 Eliz., c. 11 (1565); 1 Jac. 1, c. 17 (1604). Similar restrictions applied in the colonies, 5 Geo. 2, c. 22 (1732).

158. 17 Geo.3, c. 55, §1. The apprenticeship clauses of the Statute of Artificers were also repealed as applied to hatters, 17 Geo. 3, c. 55, §5. General repeal of the clauses came in 1814, 54 Geo. 3, c. 96. See T.K. Derry, 'Repeal of the Apprenticeship Clauses of the Statute of Apprentices' *Economic History Review* iii (1st ser. 1931-32) 67. (The Statute of Artificers was sometimes called the Statute of Apprentices.)

159. 17 Geo. 3, c. 55, §2.

160. 29 Geo. 2, c. 33, preamble (1756); 8 Geo. 3, c. 17, preamble (1768).

161. 29 Geo. 2, c. 33, § 7; 8 Geo. 3, c. 17, §8.

more explicit: appeal was conditioned on a recognizance with two sureties of five pounds each.[162] In addition the act outlawed hatters' combinations. To attend an illegal meeting, to solicit attendance or money, to endeavor to persuade another hatter to quit work, to give money to an illegal club—all were made punishable by three months imprisonment.[163] Trial was to be by two justices of the peace,[164] and appeal lay to the quarter sessions.[165] Actions against persons enforcing the act were limited to three months after the event,[166] and defendants in the latter actions were allowed to plead the general issue and recover double costs in case of judgment or nonsuit.[167] A section, by now routine, declared the act a 'public' one.[168] A new provision, at once a concession to the hatters and to procedural fair play, excluded employers who were also justices of the peace from acting in their official capacity under the act.[169]

Papermakers

In 1796 the last of the limited combination acts was passed. Disputes about wages in the papermaking industry had led the employers to petition parliament for a legislative solution.[170] Based on provisions in various earlier acts, the papermakers' combination act[171] was itself the inspiration for the famous acts that followed in 1799 and 1800. After a preamble reciting recent combinations, the act voided all contracts to raise wages, to reduce hours or work, to hinder employment of other workers, or 'in any way whatever to affect' employers in conducting business.[172] Parties to such contracts after passage of the act were liable to two months at hard labor.[173] The same punishment awaited papermakers who endeavored 'directly or indirectly' to prevent others from taking work or to prevail on others to quit work; who

162. 17 Geo. 3, c. 55, §3.

163. Ibid. §4 (imprisonment, at JPs' discretion, either in house of correction or in common jail). This is the only section of the hatters' combination act expressly repealed in 1824-25. 5 Geo. 4, c. 95, §1 (1824); 6 Geo. 4, c. 129, §2 (1825).

164. 17 Geo. 3, c. 55, §4.

165. Ibid. §8.

166. Ibid. §9.

167. Ibid. §10.

168. Ibid. §11.

169. Ibid. §6.

170. See D.C. Coleman, *The British Paper Industry, 1495-1860: A Study in Industrial Growth* (Oxford, 1958) 262-64, 272.

171. 36 Geo. 3, c. 111 (1796).

172. Ibid. §1.

173. Ibid. §2.

attempted to prevent employers from hiring other workmen; or who refused to work with them.[174] Two months imprisonment also awaited anyone who attended or solicited attendance at an illegal meeting, who gave or collected money for an illegal purpose, or who intimidated another to quit work.[175] In an effort to settle at least one aspect of the dispute that led to the statute, working hours in the industry were set legislatively: 'vat men' were to spend half an hour on each 'post' and to be assigned twenty posts; 'dry workers' were to labor twelve hours a day.[176] Regulation had shrunk to a single section; without it, there remained the blueprint for a general combination act.

Trials were to be held by one justice of the peace within one month of the offense.[177] The justice was empowered to summon offenders and witnesses;[178] he was further empowered in certain cases to arrest offenders without prior summons.[179] One offender could be compelled to testify against another but was himself in such case indemnified against prosecution.[180] Convictions were to be recorded on forms specified by the act and filed with the records of quarter sessions.[181] Appeal lay to the same sessions but the appellant was first required to enter a recognizance with two sureties for twenty pounds.[182] If the appeal failed, he had to pay the appellee's costs.[183] The writ of certiorari was denied[184] and with it the usual means for removal of the case to the common-law courts. Actions against persons enforcing the act were limited to six months after the fact; defendants were permitted to plead the general issue and recover double costs in case of judgment in their favor or nonsuit.[185] In a final section the papermakers' combination act was declared a 'public' one.[186]

174. Ibid. §4.

175. Ibid. §5.

176. Ibid. §3. For the early techniques of papermaking see Coleman, supra note 170 at 29-33. Mechanization, represented by patents beginning in 1801, soon rendered the regulations meaningless. Ibid. at 179-93.

177. 36 Geo. 3, c. 111, §2.

178. Ibid. §7.

179. Ibid. §9.

180. Ibid. §6. Compare U.S. Constitution, amend. 5 (1791) ('No person. . .shall be compelled in any criminal case to be a witness against himself . . . '). The privilege against self-incrimination had been early recognized not to apply when immunity from prosecution was granted. See Leonard Levy, *Origins of the Fifth Amendment* (Oxford, 1968) 328, 495.

181. 36 Geo. 3, c. 111 (1796).

182. Ibid. §10.

183. Ibid.

184. Ibid. §8.

185. Ibid. §11.

186. Ibid. §12.

The Combination Acts, 1799 and 1800

At the end of the eighteenth century the first general combination acts were adopted. Although applicable to all trades, they had their origin—like earlier statutes—in disputes in a particular trade. The millwrights of London, whose employers contracted to maintain the great mills on which the capital depended for much of its bread, had formed a well-organized combination seeking higher wages.[187] Unable to win the economic struggle and mindful of the various combination acts passed in the course of the century, the employers petitioned parliament 'for the better preventing of unlawful combinations of workmen employed in the millwright business, and for regulating the wages of such workmen'.[188] Not covered by any of the eighteenth-century legislation, such combinations were subject only to common-law conspiracy, which the employers found wanting:

> the only method of punishing such delinquents, under the existing laws, is by preferring an indictment, at the sessions or assizes, after the commission of the offence, but, before that time arrives, the offenders frequently remove into different parts of the country, so that, even if their places of residence should be discovered, it would be a long time before they could be brought to trial, and the expence of apprehending, and bringing them back, by *habeas*, to the place where the offence was committed, is so heavy to the masters, whose businesses have been stopped by the desertion of the journeymen, that (aware of these difficulties) the journeymen carry on their combination with boldness and impunity . . . .[189]

The petition was referred to a committee which reported by Sir John Anderson in favor of a bill on the subject.[190] At this point William Wilberforce, the humane opponent of African slavery, made his historic contribution to English labor history:

> These combinations he regarded as a general disease in our society, and for which he thought the remedy should be general; so as not only to cure the complaint for the present, but to preclude its return. He thought the worthy mover of this subject deserved praise for what he was doing, as far as the measure went; but if it was enlarged, and made general against combinations, he should be better satisfied with it, and then it would be a measure that might be of great service to society.[191]

Wilberforce's proposal was, however, ruled out of order, and the millwrights' bill passed the Commons and was sent to the Lords.[192] Two months later the prime minister himself intervened; apparently responding to

187. See C.R. Dobson supra note 15 at 138-39. See also the somewhat later *Rules Adopted, by the Journeymen Millwrights for the Well-Governing of Their Society* (London, 1801), reprinted in *British Labour Struggles*, supra note 58 at vii (reprint not separately paginated).

188. *Commons Journal* 54 (1798-99): 405.

189. Ibid. at 405-06.

190. Ibid. at 412-13.

191. *Parliamentary Register* 8 (1799):323.

192. Ibid. at 687.

Wilberforce's suggestion, William Pitt spoke in favor of a bill applicable to all workmen. Ignoring the millwrights, he referred to combinations in the North and proposed general legislation modeled on the papermakers' act.[193]

The next day George Rose,[194] Secretary to the Treasury, introduced the bill that was to become the Combination Act of 1799. In the debates on the new bill Benjamin Hobhouse inveighed against what he saw as an attempt to regulate the labor market. Recognizing that his auditors were determined to go ahead with the bill, Hobhouse quickly switched from *avant-garde* economics to old-fashioned Whiggery and moved an amendment in favor of the liberty of the subject: since trial by jury would be taken away, two justices of the peace instead of one should be required to hear each case. The motion was rejected without division, and the bill was subsequently passed.[195] In the upper chamber a major speech against it was made by Lord Holland, the nephew of Charles James Fox, who followed Hobhouse's lead, declaring 'the great and peculiar feature of the bill was, that it changed the trial by jury for a summary jurisdiction'.[196] For the motive behind the bill Lord Holland pointed to political considerations:

> On the part of the workmen, they laboured under the disadvantage arising from a certain degree of dread, that pervaded all the upper ranks of mankind, lest the lower ranks should be seduced by principles, supposed to be particularly afloat at this period, and subversive of society. . . . Was it not possible also that the masters, conscious of this temporary advantage, had availed themselves of this period, rather than any other, to enforce their views, and render their workmen more dependent than they had hitherto been, and that in all fairness and equity they ought to be.[197]

Analysis, however eloquent, was of no avail: their lordships speedily approved the bill,[198] and it became law on July 12, 1799.

After reciting the existence of numerous combinations and the inadequacy of 'the laws at present in force against such unlawful conduct', the new Combination Act promised 'more speedy and exemplary justice'.[199] The key provision in the act was the definition of an illegal contract: one made by workmen

> [1] for obtaining an advance of wages of them, or any of them, or any other journeymen manufacturers or workmen, or other persons in any manufacture, trade, or business, or
> [2] for lessening or altering their or any of their usual hours or time of working, or
> [3] for decreasing the quantity of work, or

193. *Times*, 18 June 1799.

194. Rose (1744-1818) was no stranger to workmen's associations. The earliest Friendly Societies Act, 33 Geo. 3, c. 54 (1793), was passed on his initiative. See P. H. J. H. Gosden, *The Friendly Societies in England, 1815-1875* (Manchester, 1961) 5.

195. *Parliamentary Register* 9 (1799): 65-66.

196. Ibid. at 562.

197. Ibid. at 562-63.

198. *Lords Journal* 42 (1798-1800): 307, 314, 325.

199. 39 Geo. 3, c. 81, preamble.

> [4] for preventing or hindering any person or persons from employing whomsoever he, she, or they shall think proper to employ in his, her, or their manufacture, trade, or business, or
> [5] for controlling or anyway affecting any person or persons carrying on any manufacture, trade, or business, in the conduct or management thereof.[200]

Such a contract if in existence at the passing of the act was void;[201] to make such a contract in the future was criminal;[202] to combine for such purpose was also criminal.[203] In addition, no one could endeavor 'directly or indirectly' to prevent a workman from agreeing to work or endeavor to prevail on a workman already hired to leave work; nor could he attempt to prevent any employer from hiring whomever he thought proper.[204] Finally, a workman once hired could not refuse to work with any other workman.[205] Attending a meeting held for illegal purposes or encouraging others 'directly or indirectly' to attend such a meeting was criminal, as was the payment or collection of money for illegal purposes.[206] Each of the above offenses was punishable by up to three months in the common jail or up to two months at hard labor in a house of correction.[207]

In a further penal section it was declared illegal for any person to pay expenses incurred in acting contrary to the act or to support any workman for the purpose of inducing him to refuse to work. This offense was punishable by a fine of up to ten pounds; to collect or receive such money was an offense punishable by a fine of up to five pounds. In case a fine was not paid, it could be levied by distress and sale of the offender's goods; should that fail, the offender was subject to three months imprisonment.[208] Money collected for illegal purposes before the passing of the act had to be divided up within three months; otherwise, it was forfeit. Money collected for such purposes after the passing of the act was forfeit at once. In case of forfeiture half the money went to anyone who sued for it.[209]

To provide 'more speedy and exemplary justice' the act authorized trial before a single justice of the peace within three months of the alleged

200. Ibid. §1 (numbers in brackets added).

201. Ibid.

202. Ibid. §2.

203. Ibid. §3.

204. Ibid.

205. Ibid.

206. Ibid. §4.

207. Ibid. §§2-4.

208. Ibid. §5 (imprisonment, at JP's discretion, either in house of correction or in common jail). Forms for recording both fines and imprisonment were provided in a schedule attached to the act.

209. Ibid. §6.

offense.[210] Process began with complaint and information on oath that an offense had been committed. The justice then issued a summons, which was served personally or left at the person's usual place of abode. In the event the alleged offender failed to appear as summoned, the justice was authorized to issue a warrant for his arrest.[211] At the justice's discretion, he could dispense with the initial summons and immediately issue the warrant.[212] Once the defendant was before the justice, whether in response to a summons or by the compulsion of a warrant, trial proper began. In case of conviction, the decision had to be supported by the confession of the accused or by the sworn testimony of at least one witness.[213]

The statute provided compulsory process for securing the requisite witness: the justice was required at the request in writing of any party to summon witnesses.[214] If a witness refused to appear after receipt of a summons or its delivery to his usual place of abode, he could be committed to prison by the warrant of the justice; the same fate awaited a witness who appeared but refused to testify.[215] The 'form of commitment' was given in the act; the justice filled in the blanks with his name and county, the time and place of the trial, the name of the complainant and the offense complained of, as well of course as the name of the recalcitrant witness.[216] An offender could be compelled to appear and testify; he was, however, granted immunity from prosecution.[217]

If the person charged was convicted, the justice of the peace had to make a record. The 'form of conviction' was dictated by the act; the justice filled in the date, the name of the offender, the justice's own name and county, the offense committed, and the punishment assigned.[218] This form was to be filed at the next quarter sessions.[219] The person convicted could appeal to sessions on entering into a recognizance with two sureties in the penalty of twenty pounds.[220] The decision of the sessions was final, and the common-law courts were prohibited from granting the writ of certiorari to bring the record before them for review.[221] The appellant was required to pay such

210. Ibid. §§2-5.

211. Ibid. §10.

212. Ibid.

213. Ibid.; also §§2-5.

214. Ibid. §11.

215. Ibid.

216. Ibid. §12 and schedule.

217. Ibid. §9.

218. Ibid. §12 and schedule.

219. Ibid. §13.

220. Ibid. §14.

221. Ibid. §13.

costs as to the justices appeared 'just and reasonable'; if he did not promptly pay, he was to be kept in prison until he did.[222]

In addition to providing 'more speedy and exemplary justice' the act also provided 'for the better discovery of all sums of money which have been or shall be paid or given for any purpose prohibited by this act'.[223] To this end, a person suspected of holding money for an illegal combination could be compelled to answer under oath to any information preferred against him 'by or in the name of His Majesty's Attorney General, on the part of His Majesty, or at the relation of any informer'.[224] The person against whom the information was preferred could not refuse to answer on the ground that he might thereby become liable to a penalty or forfeiture; the only way he could save himself was by paying the money into court.[225] This also discharged him from all actions and other suits respecting the surrendered money—as, by contributors for misapplication of the funds.[226] Such proceedings could be entertained only by courts of equity, a restriction presumably made because the money was viewed as a trust. The effect of this restriction was severely to limit the availability of this type of action. Unlike the justices of the peace scattered about the country, courts of equity jurisdiction were few and far between. Other than the ancient chancery court in Lancaster,[227] the only equity courts sat at Westminster. Summary procedure, elsewhere provided by the act, was compromised by such proceedings. Although the celebrated case of *Jarndyce v. Jarndyce*[228] lay still in the future, chancery in the age of Eldon was not noted for summariness.[229]

After expressly continuing in force all other regulatory legislation,[230] the act added one further procedural novelty. One justice could grant a license permitting employers to use otherwise illegal labor

> whenever the qualified journeymen or workmen usually employed in any manufacture, trade, or business, shall refuse to work therein for reasonable wages, or to work for any particular person or persons, or to work with any particular persons, or shall by refusing to work for any cause whatsoever, or by misconducting themselves when employed to

222. Ibid. §14.

223. Ibid. §7.

224. Ibid. On proceedings 'at the relation of' *(ex rel.)* an informant see Sir William Blackstone, supra note 59 at iii: 427-28.

225. 39 Geo. 3, c. 81, §8.

226. Ibid.

227. See 43 Eliz., c. 4 (1601) (authorizing chancellor of duchy of Lancaster to inquire into abuses of charitable donations).

228. Charles Dickens, *Bleak House* (London, 1853) passim.

229. John Scott, Lord Eldon (1751-1838) was chancellor 1801-06; 1807-27. See Sir William Holdsworth, *Charles Dickens as a Legal Historian* (New Haven, Conn., 1928) 79-115.

230. 39 Geo. 3, c. 81, §15.

> work, in any manner impede or obstruct the ordinary course of manufacture, trade, or business, or endeavour to injure the person or persons carrying on the same.[231]

This was, as R.Y. Hedges and Allan Winterbottom observed, 'a severe blow at the apprenticeship provisions of the Statute of Artificers, and at similar regulations provided in other statutes'.[232] Men who had not completed their apprenticeship, or who had served no apprenticeship at all, could fill places reserved by law for journeymen.[233] Such a license had to be in writing and had to state the reason why it was granted.[234] Finally, actions against persons enforcing the act had to be commenced within three months after the behavior complained of. If for any reason the plaintiff in such an action was unsuccessful, the defendant was entitled to treble costs by way of penalty.[235]

The Combination Act of 1799 remained in force for one year only. After its passage parliament received petitions from workmen all over the country—London and Westminster, Liverpool, Manchester, Bristol, Plymouth, Bath, Lancaster, Leeds, Derby, Nottingham, and Newcastle—declaring that 'the law is materially changed to the great injury of all journeymen and workmen'.[236] The Act was criticized for vagueness; the specific offenses of endeavoring to prevail on a workman to quit and of refusing to work were singled out. But none of the petitions made extensive criticism of the substantive sections; it was the procedures that attracted most attention. Every petition lamented the loss of trial by jury, which the workmen of Newcastle insisted upon as 'the grand paladium [*sic*] of English liberty'.[237] Every petition objected to the denial of certiorari. Two petitions, one from Liverpool and another from Manchester, drew attention to the absence in the 1799 Act of a provision disqualifying justices of the peace engaged in trade. It is, of course, legitimate to ask whether the petitioners were really articulating their feelings about the act or simply using arguments they thought would appeal to their auditors. Pragmatic petitioners always select the strongest arguments, that is, those most likely to receive a sympathetic hearing. At the same time, it is also true that those who think

231. Ibid. §16.

232. R.Y. Hedges and Allan Winterbottom, supra note 61 at 23. The hatters' combination act had repealed and replaced apprenticeship provisions for that trade, 17 Geo. 3, c. 55, §§1, 2, 5 (1777). The apprenticeship clauses of the Statute of Artificers were repealed in 1814, 54 Geo. 3, c. 96. See supra note 158.

233. See, e.g., Spitalfields Act, 13 Geo. 3, c. 68, §7 (1773) (numbers of apprentices limited to two per journeyman). See also hatters' combination act, 17 Geo. 3, c. 55, §2 (1777) (masters must employ one journeyman per apprentice).

234. 39 Geo. 3, c. 81, §16.

235. Ibid. §17.

236. *Commons Journal* 55 (1799-1800): 645–46, 665, 672, 706, 712. On the petition from Manchester see John Bohstedt, *Riots and Community Politics in England and Wales, 1790-1810* (Cambridge, Mass., 1983) 139-41.

237. *Commons Journal* 55 (1799-1800): 712.

petitioning worth their while share some at least of the ideals of their auditors.

The House reacted to these criticisms. On June 30, 1800 the subject was referred to a committee of six, who were to bring in a bill to explain and amend the earlier act. Two of the six, the playwright Richard Brinsley Sheridan[238] and General Banastre Tarleton,[239] were Whigs and opposed in principle to the 1799 legislation. The other four favored moderate change, and some attempt was made to meet the petitioners' objections. The committee's bill passed rapidly through both Houses and became law on July 29, 1800, one year and seventeen days after the first Combination Act. For the next quarter-century, until its repeal in 1824,[240] the Combination Act of 1800 was the primary statute governing the legal status of trade unionism.

The 1799 Act was repealed and replaced, but the substantive changes were not great. The definition of an illegal agreement was clarified: by the addition of bracketed matter it was made clear that a contract between an employer and his workman concerning the work of that workman was not voided by the Act.[241] Some such exception was necessary, since on a literal reading the 1799 Act outlawed all employment contracts. The words 'wilfully and maliciously' supplanted 'directly or indirectly' in the definition of the crimes of endeavoring to prevent a workman from agreeing to work and of endeavoring to prevail on a workman already hired to leave work; the same substitution was also made in the definition of the offense of attempting to prevent any employer from employing whomever he thought proper.[242] The phrase 'without any just or reasonable cause' was inserted in the offense of refusing to work when hired.[243] 'Directly or indirectly' was deleted from the crimes of endeavoring to induce attendance at an illegal meeting and of paying or collecting money for illegal purposes.[244] The word 'wilfully' was added to the offense of paying the expenses of anyone violating the Act.[245] Finally, a new crime was created: combination by

238. Sheridan (1751-1816), faithful ally of Charles James Fox, sat for various constituencies 1780-1812.

239. Tarleton (1754-1833) represented Liverpool 1790-1806; 1807-12. He had served with distinction in the British Army battling the American revolutionaries. His *History of the Campaigns of 1780 and 1781 in the Southern Provinces of North America* (London, 1787) remains a valuable source. See Robert Middlekauff, *The Glorious Cause: The American Revolution, 1763-1789* (New York, 1982) 474-75, nn.27-28.

240. 5 Geo. 4, c. 95, §1 (1824) and 6 Geo. 4, c. 129, §2 (1825) (repealing combination sections); 5 Geo. 4, c. 96, §1 (1824) (repealing arbitration sections).

241. 39 and 40 Geo. 3, 106, §1.

242. Ibid. §3.

243. Ibid.

244. Ibid. §4.

245. Ibid. §5.

employers. Again the strategy was to void illegal contracts, in this case defined as those made

> [1] for reducing the wages of workmen, or
> [2] for adding to or altering the usual hours or time of working, or
> [3] for increasing the quantity of work.[246]

Employers who made such agreements were to be punished. Unlike workmen who combined, however, guilty employers were not immediately liable to imprisonment. Instead, their punishment was set at twenty pounds, of which half went to the crown, a quarter to the informer, and a quarter to the poor of the parish. Only in case the fine was not paid and could not be levied by distress and sale of goods were employers liable to three months imprisonment.[247]

With regard to procedures some changes were also made. First, two justices instead of one were now necessary for the trial of offenses.[248] Second, a new section disqualified justices of the peace who were also masters 'in the particular trade or manufacture in or concerning which any offence is charged to have been committed'.[249] Other changes made in 1800 amended in more or less significant ways the proceedings prescribed in 1799. The typical prosecution still began with complaint and information on oath before one justice who summoned the person charged to appear for trial.[250] Now, however, if service was effected by leaving the summons at the person's usual place of abode, 'the same shall be so left twenty-four hours at the least before the time which shall be appointed to attend the said justices upon such summons'.[251] If the alleged offender failed to appear as summoned, then the justices issued a warrant for apprehending him. If the even speedier alternative of immediate apprehension by warrant, that is, dispensing with the initial summons, was adopted, then two justices had to act.[252] Compulsory process could also be used to summon a witness. Once more, however, the provision for service of process by leaving the summons at the witness' home was tightened: to be effective the summons must have been left at least twenty-four hours before the time appointed for appearance.[253] Thus far, such amendments as the 1799 Act underwent before its

246. Ibid §17 (numbers in brackets added).

247. Ibid. (imprisonment, at JPs' discretion, either in house of correction or in common jail).

248. Ibid. §§2-5, 10, 17.

249. Ibid. §16. J. Steven Watson overlooked this section when he wrote concerning the Combination Acts that the 'provision for the trial of industrial offences before two magistrates simply made the masters judges of their own men in many cases'. *The Reign of George III, 1760-1815* (Oxford, 1960) 362.

250. 39 and 40 Geo. 3, c. 106, §10.

251. Ibid.

252. Ibid.

253. Ibid.

reincarnation in 1800 may be characterized as in favor of workmen, relatively speaking. One change going directly contrary to the interests of workmen, however, was introduced: the 1800 Act permitted trials *in absentia*. The justices of the peace were to proceed to judgment either upon the appearance of the accused 'or upon proof on oath of such person or persons absconding'.[254]

In case of conviction the justices had to file a record with the next quarter sessions. As in 1799 forms were provided in the act. In fact, the draftsman in 1800 simply carried over the 1799 forms, after first replacing the one justice required in 1799 by the two required in 1800.[255] As in 1799 the person convicted had a right of appeal. Judgments appealed from were suspended on the appellant's entering into a recognizance. As in 1799 the total sum put in penalty was twenty pounds, but under the 1800 Act the distribution was different: instead of two sureties for twenty pounds, under the 1800 Act the appellant himself had to enter into a recognizance for ten pounds with two sureties for five pounds each.[256] No longer were the sessions the court of last resort. Unlike the 1799 Act which expressly prohibited the writ of certiorari, the 1800 Act made no mention of it, thus *sub silentio* restoring the power of review.

In proceedings for forfeiture of funds a change was made that strengthened the safeguards against self-incrimination: the person holding funds collected for an illegal purpose could, as in 1799, be compelled by an equity court to answer under oath to any information preferred against him. He could not refuse to answer because his answer might expose him to a penalty or forfeiture; paying the money into court was still the only way he could save himself. But the 1800 Act stipulated in addition that he himself was to be immune from criminal prosecution.[257] In the third major proceeding contemplated under the Combination Act, an application for a license to use

254. Ibid.

255. Ibid.§12 and 1st schedule. In his haste the draftsman had failed to make two other necessary changes. First, the 'form of conviction' still referred to 'the statute made in the thirty-ninth year of the reign' of King George III, that is, to the Combination Act of 1799. Second, the 'form of conviction in a pecuniary penalty' stated, as in 1799, that the fines were 'for the use of his majesty' despite the fact that under the 1800 Act a quarter of the fine was reserved for the informer and a quarter for the poor of the parish. These failures required a new act to correct them, 41 Geo. 3, c. 38 (1801).

Until 1824, when the Combination Act of 1800 was repealed, all convictions under the Act were recorded on the forms as corrected in 1801. Until all extant records are examined there can be no final conclusion to the debate concerning the enforcement of the Act. At present research has barely begun. In the records of the Lancaster quarter sessions one scholar found seven successful prosecutions involving twenty-four men during the troubled years 1818-22. John Foster, *Class Struggle and the Industrial Revolution: Early Industrial Capitalism in Three English Towns* (London, 1974) 29 and 283, n. 11. This total does not include the record removed by certiorari in R. v. Ridgway, 5 B. and A. 527, 106 Eng. Rep. 1283 (K.B. 1822).

256. 39 and 40 Geo. 3, c. 106, §23.

257. Ibid. §8.

illegal labor, the 1800 Act made no changes. One justice remained competent to grant the license.[258] Finally, in any action brought against a person for anything done in pursuance of the Act the limitation on actions remained three months. However, the penal clause of 1799 awarding treble costs to an unsuccessful plaintiff was eliminated: after 1800 full costs only were permitted to be taxed.[259]

In 1799 and 1800 parliament outlawed collective action and voided collective agreements. The paradigmatic employment contract was between individuals: one employer contracting for the services of one workman. The Tudor-Stuart policy of wage regulation by the justices of the peace was ending. Within the new legislative scheme the role of the justices was to prevent group action and to enforce the individual contract. In place of their historic role as regulators the justices received a limited role as arbitrators.[260] In this last area the 1800 Act made a major contribution. Arbitration was not new in the industrial context, but before 1800 it was limited to specific industries. By the Combination Act of 1800 it was for the first time extended to 'all disputes' respecting

> [1] the price or prices to be paid for work actually done in any manufacture, or
> [2] any injury or damage done or alleged to have been done by the workmen to the work, or respecting
> [3] any delay or supposed delay on the part of the workmen in finishing the work, or
> [4] the not finishing such work in a good and workman-like manner, or according to any contract.[261]

This extension of arbitration is comparable to the extension of the ban of the Combination Act to all trade unions. Just as parliament had come to think of 'workmen' in place of tailors, papermakers, and millwrights, so it had begun to think in terms of 'all disputes' rather than of stoppages in particular trades.

The parliamentary history of the arbitration sections reveals a conscious turn from the old policy of regulation toward the new policy of arbitration. The committee which had considered amendments to the 1799 Act had incorporated provisions based on the then-pending cotton arbitration bill.[262] These provisions had applied to 'all cases . . . respecting the price or prices to be had for work done or to be done in any manufacture . . . '.[263] These provisions, in other words, prescribed arbitration concerning wages to be paid for future work as well as concerning wages due for past work. Such arbitration would, as contemporaries quickly perceived, have been tanta-

258. Ibid. §15.

259. Ibid. §25.

260. On the 'magistrate as mediator' in the eighteenth century see C.R. Dobson, supra note 15 at 74, 92.

261. 39 and 40 Geo. 3, c. 106, §18 (numbers in brackets added).

262. Enacted as 39 and 40 Geo. 3, c. 90 (1800).

263. See Lord Amulree, *Industrial Arbitration in Great Britain* (London, 1929) 27, n. 1.

mount to regulation. When the motion was made for the third reading of the combination bill the Attorney General, Sir John Freeman Mitford, opposed the arbitration clauses on that ground: 'The obvious tendency of the clauses was to fix the wages'.[264] On the motion of the prime minister debate was adjourned until the next day. When the matter was again brought forward, an amendment was offered deleting the language giving arbitration prospective effect.[265] What was left was a system by which to settle disputes over the performance of an existing contract—'work actually done'—not over the terms of future contracts. Either party could demand an arbitration within three days by two arbitrators, one appointed by each side. If the arbitrators could not agree, the matter was to be settled within three days by a justice of the peace, who had power to summon witnesses and compel them to testify.[266] If either party failed to perform what was directed by an award, he was liable to imprisonment until he complied. If an arbitration was demanded by one side and the other failed to appoint an arbitrator, the defaulting party was liable to a fine of ten pounds.[267]

The extent to which the Combination Act of 1800 represented a change of policy can now be assessed. To be sure, it created no new crime. Workmen in various sectors of the economy, including the all-important cotton industry, were already covered by combination acts; those not covered by legislation were subject to the common law of conspiracy. Yet neither the statutory nor the common-law regime had proved satisfactory. 'Many subtil devices' had rendered earlier acts ineffectual.[268] And, as the master millwrights complained at the end of the century, the cumbersome procedures of the common law could be thwarted less subtly—by simply walking out of the jurisdiction.[269] The 1799 Act, on which that of 1800 was no more than an improvement, promised only 'more speedy and exemplary justice'.[270] With that end in mind the legislative draftsman could profit from trial and error spread over eight decades. Even at that, it took two tries to adjust the combination law to the existing social and political balance. Common-law conspiracy was not abolished;[271] it was paralleled by the speedier, cheaper, more foolproof alternative of a prosecution for combi-

264. *Parliamentary Register* 12 (1800):459.

265. *Commons Journal* 55 (1799-1800):776.

266. 39 and 40 Geo. 3, c. 106, §18. By agreement the parties could extend the time permitted the arbitrators. Ibid. §19.

267. Ibid. §22.

268. 8 Geo. 3, c. 17, preamble (1768). See also 29 Geo. 2, c. 33, preamble (1756); 17 Geo. 3, c. 55, preamble (1777).

269. *Commons Journal* 54 (1798-99): 405-06.

270. 39 Geo. 3, c. 81, preamble (1799).

271. See R. v. Salter, 5 Esp. 125, 170 Eng. Rep. 760 (Kingston Assizes 1804); *Times* Printers' Case, *Times*, Nov. 9, 1810 (Old Bailey); R. v. Ferguson, 2 Stark. 489, 171 Eng. Rep. 714 (Lancaster Assizes 1819); R. v. Connell, *Times*, July 10, 1819 (K.B.).

nation. The remedy to what Wilberforce perceived as 'a general disease'[272] had at last been itself generalized.

Not only was the cure made general in 1799–1800, but the disease was defined more comprehensively. The simple contract to raise wages or shorten hours that had been outlawed in the first tailors' act (1721) had been elaborated in successive acts until it reached final form in the papermakers' act (1796), from which it was transferred to the general acts.[273] The procedural sections too collected the lessons learned over the years. From the second tailors' act (1768) came provisions to compel witnesses to appear and testify,[274] as well as sections regulating counteractions against those enforcing the act.[275] From the second weavers' act (1756) and from the hatters' act (1777) came detailed provisions concerning recognizances required for appeal.[276] Forms to simplify the work of the justices of the peace were taken from the second silk-makers' act (1792) by way of the papermakers' act (1796).[277]

Even the concessions to workmen granted in 1800 were not new under the sun. Two justices of the peace had been required in all but one of the earlier combination acts; only the papermakers' act (1796) had allowed one justice to decide guilt or innocence.[278] Likewise the disqualification of justices engaged in a trade in which a dispute had arisen had been copied from the hatters' act (1777).[279] Employers had also not been immune from prosecution under earlier acts. Although 1800 saw the creation of the first crime of combination by employers, they had been liable to prosecution for, among other things, paying more than the rates set by the first tailors' act (1721)[280] and the Spitalfields Act (1773),[281] or for paying in truck contrary to the first weavers' act (1726).[282]

Not every provision of the 1800 Act was traceable, however, to prior

272. *Parliamentary Register* 8 (1799): 323.

273. Compare 39 Geo. 3, c. 81, §1 (1799) and 39 and 40 Geo. 3, c. 106, §1 (1800) with 7 Geo. 1, st. 1, c. 13, §1 (1721) and 36 Geo. 3, c. 111, §1 (1796).

274. Compare 39 Geo. 3, c. 81, §11 (1799) and 39 and 40 Geo. 3, c. 106, §1 (1800) with 8 Geo. 3, c. 17, §3 (1768).

275. Compare 39 Geo. 3, c. 81, §17 (1799) and 39 and 40 Geo. 3, c. 106, §25 with 8 Geo. 3, c. 17, §§9-10 (1768).

276. Compare 39 Geo. 3, c. 81, §14 (1799) and 39 and 40 Geo. 3, c. 106, §23 with 29 Geo. 2, c. 33, §7 (1756) and 17 Geo. 3, c. 55, §3 (1777).

277. Compare 39 Geo. 3, c. 81, §12 and schedule (1799) and 39 and 40 Geo. 3, c. 106, §12 and schedule 1 (1800) with 32 Geo. 3, c. 44, §2 (1792) and 36 Geo. 3, c. 111, §8 (1796).

278. 36 Geo. 3, c. 111, §2 (1796).

279. Compare 39 and 40 Geo. 3, c. 106, §16 (1800) with 17 Geo. 3, c. 55, §6 (1777).

280. 7 Geo. 1, st. 1, c. 13, §§2, 3, 7 (1721).

281. 13 Geo. 3, c. 68, §2 (1773).

282. 12 Geo. 1, c. 34, §3 (1726).

legislation. Trial *in absentia* was new in 1800, and forfeiture of funds[283] as well as licensing of illegal labor, both authorized in 1799 and 1800, were without precedent. Above all, formal arbitration procedures were new in 1800. In this regard the Combination Act did represent a change in policy. As the Webbs observed long ago, in prior acts 'the prohibition of combination was in all cases incidental to the regulation of the industry'.[284] The *quid pro quo* of anti-combination provisions were provisions setting wages and hours or outlawing truck. In 1800 as Attorney General Mitford made clear, regulation was abandoned;[285] in its place was offered arbitration concerning existing contracts.[286]

English combination acts of the eighteenth century represent a search for a policy of industrial relations; the Combination Act of 1800 represents the policy finally arrived at. Parliament hesitated long before abandoning the age-old policy of wage regulation; its ambivalence was made manifest when wage regulation in weaving was authorized in 1756 and repealed in 1757.[287] At the end of the century the decision was finally made. Wages would no longer be state business; capital and labor would fight it out for themselves. For better and worse, that decision held for years to come; it has not been finally rejected yet. Ample room for controversy, of course, remained. Rules for the economic struggle had yet to be drafted; the degree of state involvement, short of wage regulation, had yet to be determined. But the primacy of the employment contract had been established, if only by default. Once the state ceased to regulate wages, no other legal device remained except contract. When the draftsman of the 1800 Act realized that the language adopted a year earlier to suppress combinations included employment contracts in its sweep, he hastily inserted a parenthetical: 'save and except any contract made or to be made between any master and his journeyman or manufacturer,[288] for or on account of the work or service of

283. Forfeiture of funds used for illegal purposes may be attributable to George Rose who was intimately familiar with friendly society finances, see supra note 194.

284. Sidney and Beatrice Webb, supra note 8 at 65.

285. *Parliamentary Register* 12 (1800): 459.

286. Freed from responsibility for wage regulation the state soon undertook to regulate conditions of work. Although such regulation affected overall compensation, it constituted a less obvious breach in *laissez faire*. See, e.g., the Factory Acts, 42 Geo. 3, c. 46 (1802), 59 Geo. 3, c. 66 (1819), 1 and 2 Will. 4, c. 39 (1831) and the Truck Acts, 1 and 2 Will. 4, cc. 36 and 37 (1831). On this legislation see respectively B.L. Hutchins and A. Harrison, *A History of Factory Legislation* (London, 3d ed., 1926) and George W. Hilton, supra note 96 at 101–18.

287. 29 Geo. 2, c. 33 (1756); 30 Geo. 2, c. 12 (1757).

288. Throughout the eighteenth century the word 'manufacturer', true to its Latin roots, meant a person who manually produced goods. See John Rule, supra note 73 at 21, 37. In the nineteenth century the word crossed the divide between capital and labor. In Place's 1825 Act it was still *en route*: in one section it was used to mean both a 'person hired or employed' and a 'person carrying on any trade or business'. 6 Geo. 4, c. 129, §3.

such journeyman or manufacturer with whom such contract may be made'.[289] Because combination had been defined in terms of contract, the employment contract appeared as an exception to a general rule of criminal law. By a clumsy saving clause, status finally yielded to contract.[290]

English Combination Acts of the Eighteenth Century: Retrospect

While the Combination Acts of 1799–1800 did represent a significant development of policy, they also maintained significant continuity with prior legislation. The distinguishing feature of all combination acts was their definition of illegal contracts. The terms might be simple or elaborate, but at the heart of combination lay contract. It may seem strange today to define a union in terms of contract; even in the nineteenth century the term 'trade union' had a fairly precise definition: 'an unincorporated voluntary association of individuals, sometimes performing the functions of a friendly society, but primarily constituted to maintain, and if possible improve, the terms and conditions of employment of its members by its aggregate strength in men and money'.[291] But contract accurately described the reality

289. 39 and 40 Geo. 3, c. 106, §1.

290. See Sir Henry Maine, *Ancient Law* (London, Everyman ed., 1917) 100 ('the movement of the progressive societies has hitherto been a movement *from Status to Contract*') (italics in original).

291. R.Y. Hedges and Allan Winterbottom, supra note 61 at 65. The Webbs utilized a similar definition: 'A Trade Union, as we understand the term, is a continuous association of wage-earners for the purpose of maintaining or improving the conditions of their working lives'. Sidney and Beatrice Webb, supra note 8 at 1. Their insistence on continuity has been criticized. See, e.g., John Rule, supra note 73 at 149-50; V.L. Allen, 'A Methodological Criticism of the Webbs as Trade Union Historians', *Bulletin of the Society for the Study of Labour History*, No. 4 (1962) 5.

The Trade Union Act of 1871 attempted a legal definition:

> The term 'trade union' means such combination, whether temporary or permanent, for regulating the relations between workmen and masters, or between workmen and workmen, or between masters and masters, or for imposing restrictive conditions on the conduct of any trade or business, as would, if this Act had not passed, have been deemed to have been an unlawful combination by reason of some one or more of its purposes being in restraint of trade: Provided that this Act shall not affect
>
> 1. Any agreement between partners as to their own business;
> 2. Any agreement between an employer and those employed by him as to such employment;
> 3. Any agreement in consideration of the sale of the goodwill of a business or of instruction in any profession, trade, or handicraft.

34 and 35 Vict., c. 31, §23. Since 'trade union' was defined in terms of the law concerning restraint of trade and since that law, which was part of conspiracy law, was disputed, the statutory definition raised more questions than it answered. See supra note 61. In 1876 new legislation sidestepped the issue by making restraint of trade irrelevant. 39 and 40 Vict., c. 22, § 16.

of some eighteenth-century combinations. Adam Smith observed that 'when masters combine together in order to reduce the wages of their workmen, they commonly enter into a private bond or agreement, not to give more than a certain wage under a certain penalty'.[292] Employers were, in other words, simply carrying over into labor relations the legal forms they used in business. Labor organizations had, on the other hand, a more traditional, convivial, and less legalistic basis. Association developed informally in the conditions of working life. Social meetings took on in turn functions of friendly societies and trade unions.[293] Thinking about such groups solely in contractual terms risked *reductio ad absurdum*.

Such reductionism is not surprising, however, in the century that made the social contract famous.[294] Although not yet the sovereign legal concept it was to become in the nineteenth century,[295] contract had already begun its irresistible rise. Even Blackstone said more about it than the structure of his *Commentaries* would suggest.[296] But reducing workmen's combinations to contracts ran the further risk of missing the point. As Dr. Johnson reminded his readers: 'It is one of the maxims of the civil law, that *definitions are hazardous*'.[297] Operating as a friendly society was perfectly legal,[298] and it is a commonplace of labor history that trade unions often consciously adopted that disguise during the era of the Combination Acts.[299] Ironically

292. Adam Smith, supra note 89 at 142. For an action on just such a bond in the nineteenth century see Hilton v. Eckersley, 6 El. and Bl. 47, 119 Eng. Rep. 781 (Q.B. 1855) (held: bond unenforceable because in restraint of trade) (judgment affirmed in Exchequer Chamber).

293. Cf. H.A. Turner, *Trade Union Growth, Structure and Policy: A Comparative Study of the Cotton Unions in England* (Toronto, 1962) 77-89. See also John Rule, supra note 73 at 149-51.

294. See Jean-Jacques Rousseau, *Du contrat social* (Paris, 1762); Sir William Blackstone, supra note 59 at i: 226-29 ('the original contract between king and people'). See generally J.W. Gough, *The Social Contract: A Critical Study of Its Development* (Oxford, 2d ed., 1957).

295. See P.S. Atiyah, *The Rise and Fall of Freedom of Contract* (Oxford, 1979) 219–568.

296. See Duncan Kennedy, 'The Structure of Blackstone's Commentaries', 28 *Buffalo Law Review* 209, 321-25 (1979). But see Otto Kahn-Freund, 'Blackstone's Neglected Child: The Contract of Employment', 93 *Law Quarterly Review* 508 (1977).

297. *Rambler*, No. 125 (May 28, 1751) (italics in original). See *Digest* 50, 17, 202 ('*Omnis definitio in jure civili periculosa est; parum est enim, ut non subverti possit*').

298. See 33 Geo. 3, c. 54 (1793). Friendly societies, which provided a form of insurance, might properly have been defined in contractual terms. Instead they were described as 'societies of good fellowship, for the purpose of raising, from time to time, by subscriptions of the several members of every such society, or by voluntary contributions, a stock or fund for the mutual relief and maintenance of all and every the members thereof, in old age, sickness, and infirmity, or for the relief of the widows and children of deceased members'. Ibid.§1.

299. See, e.g., Francis Place, *Autobiography*, (Cambridge, Mary Thale, ed., 1972), 112-13. For a recent comment on historians' 'tendency to over-stress the need for a

the eighteenth-century legislation actually provided a basis for certain aspects of labor organization. Gathering to petition the justices of the peace for a rise in wages was, for example, implicitly recognized as lawful.[300] *Exceptio probat regulam.*[301] The very enactment of the 1799 Act inspired massive petitions to parliament.

There is, however, a deeper irony in this legal reductionism. Only a few years before the final Combination Acts Edmund Burke had penned his impassioned attack on the social contract of the French *philosophes:*

> Society[302] is indeed a contract . . . but the state ought not to be considered as nothing better than a partnership agreement in a trade of pepper and coffee . . . . It is to be looked on with other reverence. . . . It is a partnership in all science; a partnership in all art; a partnership in every virtue, and in all perfection . . . a partnership . . . between those who are living, those who are dead, and those who are to be born.[303]

Burke's insight into the woeful inadequacy of contract as a means of describing social organizations may be conceded, although his inability to transcend the language of contract must be noted. He could only struggle to transcend its narrow meaning. But while Burke argued on behalf of his organic vision of society, English parliamentarians and their lawyers had already adopted the voluntaristic view. For years in an important area of the economy they had recognized in their own minds no relationship except that of contract.

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friendly society cover at all times and for all collective purposes' see John Rule, supra note 73 at 180.

300. See 13 Geo. 3, c. 68, §3 (1773) and text at supra notes 138-39.

301. See Metcalfe's Case, 11 Coke 38a, 41a, 77 Eng. Rep. 1198 (K.B. 1615).

302. Burke was, it appears, making a bilingual pun involving the French *société*, 'partnership'. E.J. Payne, ed., *Burke: Select Works*, 2 vols. (Oxford, 1881) ii: 351. The modern French equivalent of the limited liability corporation is the *société anonyme*.

303. Edmund Burke, *Reflections on the Revolution in France* (London, Everyman ed. 1910, 1st ed., 1790) 93.

APPENDIX

IRISH COMBINATION ACTS OF THE EIGHTEENTH CENTURY

[Note. Acts numbered (1) to (10) were repealed by name in 1824 and again in 1825. Unnumbered acts were repealed in 1824 and 1825 insofar as they fell within the general repealer in those statutes, see text at n. 26, supra.]

	Citation	Coverage
(1)	3 Geo. 2, c. 14 (1729)*	General
(2)	17 Geo. 2, c. 8 (1743)	General
	29 Geo. 2, c. 12 (1756)**	Miners
(3)	3 Geo. 3, c. 17 (1763)	Combinations in Cork
(4)	3 Geo. 3, c. 34 (1763)***	Manufacturers of Linen, Hemp, & Cotton
(5)	11 & 12 Geo. 3, c. 18 (1771)****	Combinations in Cork
(6)	11 & 12 Geo. 3, c. 33 (1772)	Tailors & Shipwrights in Dublin
	17 & 18 Geo. 3, c. 17 (1777)	Bakers in Dublin

* amended in part by 5 Geo. 2, c. 4 (1731).

** continued by 1 Geo. 3, c. 17 (1761).

*** repealing & replacing 31 Geo. 2, c. 17 (1757) and 33 Geo. 2, c. 5 (1759).

**** amended in part by 19 & 20 Geo. 3, c. 27 (1779).